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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,900	09/29/2003	Robert F. Bartfai	TUC920030109US1	4827
35825 7590 04/28/2009 LAW FIRM OF DAN SHIFRIN 6208 Devinney Circle ARVADA, CO 80004				
EXAMINER MYINT, DENNIS Y				
ART UNIT		PAPER NUMBER		
2162				
NOTIFICATION DATE		DELIVERY MODE		
04/28/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DAN-SHIFRIN@COMCAST.NET

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/674,900	<b>Applicant(s)</b> BARTFAI ET AL.
<b>Examiner</b> DENNIS MYINT	<b>Art Unit</b> 2162

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. First Paragraph and 35 U.S.C. 101.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-29.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/John Breene/  
Supervisory Patent Examiner, Art Unit 2162

Continuation of 11, does NOT place the application in condition for allowance because:

In light of Applicant's explanation (Applicant's After-Final argument, page 9 second paragraph), rejection of claims 1-8 under 35 U.S.C. 112 first paragraph in the prior office action is hereby withdrawn. In light of the amendment made to claim 14 (deleting "secondary" and adding "primary" in line 11), rejection of claims 14-21 under 35 U.S.C. 112 first paragraph in the prior office action is hereby withdrawn. In light of the amendment made to claim 22 (adding the limitation "storage" in line 1 of claim 22), rejection of claims 22-29 under 35 U.S.C. 101 in the prior office action is hereby withdrawn.

Applicant argued that "the cited step of Taylor occurs only after the backup has been completed. In contrast, the cited step in claim 1 occurs as part of the preparation of each FlashCopy source volume, before the FlashCopy operation is committed or completed. Consequently, claim 1 as amended is not rendered obvious by the cited combination of references" (Applicant's argument, page 10 second paragraph).

In response, it is pointed out that claim 1 (just as other independent claims) is rejected as being over the combination of Miillio in view of Asselin and further in view of Taylor. Asselin page 2-3 teaches a method of concurrent copy wherein source is not available for access for a short period of time while concurrent copy process initialized. Asselin Page 2 recites "when you use concurrent copy, application processing is interrupted only for a short period while the system initializes the concurrent copy environment and Page 3, i.e., The "system serializes access to the data being dumped or copied long enough for the concurrent copy session to be initialized". Therein, it is evident in the method of concurrent copy as taught by Asselin that write-inhibit indicators are imposed "during the initialization period" of the concurrent copy process. Additionally, page 6 of Asselin teaches multiple source volumes and target volumes as "From the perspective of the host, a concurrent copy session can include multiple data sets and span multiple volumes and storage controls. A data set can participate in multiple sessions. A session remains in effect until DFSMSds transfers all tracks in the domain from the storage control to the host and copies them to the backup media (Asselin page 7 fourth paragraph). Moreover, fifth paragraph on page 6 of Asselin teaches "the SDM includes ranges of tracks for each volume in the domain. When the 3990 has transferred all tracks in range to the host system, the SDM removes those tracks from the concurrent copy session". Also note Figure 4 of Asselin wherein concurrent system overview is presented. As such, one of a plurality of targets volumes in the system/method of Asselin maps to "FlashCopy target volumes" of the claimed invention, i.e., item 120 of Figure 1 of the specification of the claimed invention. Note that Taylor reference teaches, as cited in the prior art, the condition that "if a preparation of a copy/backup operation is successful, committing said copy/back operation and "if not, reverting said copy/backup operation by retaining a prior database (Taylor paragraph 0040). As such, it is pointed out that Miillio in view of Asselin and further in view of Taylor and Asselin teaches claim 1 and other independent claims.

Referring to claims 7 and 8, Applicant argued that "the Applicant traverses the rejection of claims 7 and 8 (and their parallel claims in other claim sets). First, the Applicant would like to highlight the distinction between claims 7 and 8, an attempt is made to prepare one source volume for a FlashCopy operation and then a decision is made as to whether the attempt was successful. Following that decision, an attempt is made to prepare another source volume and a decision is made to whether the attempt for that source volume was successful. The attempt/decision steps are performed sequentially for each source volume to be FlashCopied. In contrast, in claim 8, attempts are made to prepare all of the source volumes and only then is a decision made as to whether all of the attempts were successful (or, putting it another way, whether one of the attempts was successful) (Applicant's argument, page 10 third paragraph).

In response, it is pointed out that claim 8 does not recite one attempt after another were made and only after all attempts were exhausted and at least one of the attempts was successful, a decision was made as to whether all of the attempt were successful. Claim 8 and parallel claims in other claim sets only recites "deciding after attempts to prepare all FlashCopy source volumes whether the preparation of all FlashCopy source volumes are successful". It is noted that the features upon which applicant relies (i.e., "one attempt after another were made and only after all attempts were exhausted and at least one of the attempts was successful, a decision was made as to whether all of the attempt were successful") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Respectfully,

/Dennis Myint/  
Examiner, AU-2162